

Westlake, OH  
Warrensville Hts., OH  
Middleburg Hts., OH  
Beachwood, OH  
Cleveland, OH

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LABORERS' INTERNATIONAL UNION  
OF NORTH AMERICA, LOCAL 310

and

KMU TRUCKING & EXCAVATING  
SCHIRMER CONSTRUCTION CO.  
PLATFORM CEMENT, INC.  
21st CENTURY CONCRETE CONSTRUCTION, INC.  
INDEPENDENCE EXCAVATING, INC.  
DONLEY'S INC.

Cases 08-CD-109665  
08-CD-109666  
08-CD-109671  
08-CD-109683  
08-CD-109709  
08-CD-114937

and

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 18, AFL-CIO

ORDER DENYING MOTION FOR RECONSIDERATION

On September 3, 2014, the National Labor Relations Board issued a Decision and Determination of Dispute<sup>1</sup> in this proceeding, finding that employees represented by Laborers' International Union of North America, Local 310 (Laborers) are entitled to perform the disputed work of operating forklifts and skid steers. Taking notice of the grant of an areawide award of work of the kind in dispute in a recent decision involving the same parties, *Operating Engineers Local 18 (Donley's, Inc.) (Donley's II)*, 360 NLRB No. 113 (2014), the Board restated and applied that award in this case. Thereafter,

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<sup>1</sup> *Laborers Local 310 (KMU Trucking & Excavating)*, 361 NLRB No. 37.

International Union of Operating Engineers, Local 18 (Operating Engineers) filed a Motion for Reconsideration of the Board's restatement and application of the areawide award.

The Board has delegated its authority in this proceeding to a three-member panel.

Having duly considered the matter, we find that Operating Engineers' motion fails to establish "extraordinary circumstances" warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

In granting the areawide award in *Donley's II*, the Board found that (1) the work was a continuous source of controversy between Operating Engineers and Laborers and was likely to remain so on other jobsites within Operating Engineers' geographical jurisdiction, and (2) Operating Engineers showed a proclivity to use means proscribed by Section 8(b)(4)(D) to obtain the disputed work.<sup>2</sup> *Supra*, slip op. at 7-8. In the underlying decision here, involving the same parties, the Board took notice of this areawide award and restated and applied it in accordance with the Employers' and Laborers' requests.<sup>3</sup> Operating Engineers argues that the Board's restatement of the areawide award is impermissible because Laborers – and not Operating Engineers – is the charged party in this proceeding. We disagree.

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<sup>2</sup> In a case preceding *Donley's II* that also involved the same parties, *Laborers Local 894 (Donley's Inc.) (Donley's I)*, 360 NLRB No. 20 (2014), the Board found that work of the kind in dispute was a continuous source of controversy within Operating Engineers' jurisdiction. However, based on then-insufficient evidence that similar disputes might recur, and that Operating Engineers had a proclivity to engage in proscribed conduct in order to obtain the disputed work, the Board in that case denied the Employer's and Laborers' request for an areawide award.

<sup>3</sup> *Laborers Local 310*, *supra*, slip op. at 6.

Although a request for an areawide award is often not granted when the charged party represents the employees to whom the work is awarded,<sup>4</sup> the Board's consideration of a request for such an award is not limited to a consideration of the conduct of the charged party.<sup>5</sup> Rather, the critical factor is whether "there is evidence that similar disputes may occur in the future."<sup>6</sup> The evidence recounted in this case, together with that considered in the prior *Donley's* cases, clearly establishes a likelihood of such recurrence. Additionally, the prior grant of an areawide award, applicable to the parties in this proceeding, cannot be ignored.<sup>7</sup> Thus, in these circumstances, and even giving due consideration to the fact that Operating Engineers is not the charged party in this proceeding, it was entirely appropriate to reaffirm our earlier grant of the areawide award.

Accordingly, we find that Operating Engineers has failed to establish any "extraordinary circumstances" warranting reconsideration of our earlier decision.

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<sup>4</sup> See, e.g., *Laborers Local 860 (Ronyak Paving, Inc.)*, 360 NLRB No. 40 (2014).

<sup>5</sup> See, e.g., *Bay Counties Carpenters (Northern California Contractors Assn.)*, 265 NLRB 646, 650 fn. 9 (1982) (finding conduct of noncharged party relevant to grant of areawide award).

<sup>6</sup> *Carpenters (Standard Drywall)*, 348 NLRB 1250, 1256 (2006), enfd. sub nom. *Standard Drywall, Inc. v. NLRB*, 547 Fed.Appx. 809 (9th Cir. 2013). See also *Laborers Local 1184 (Massey Sand and Rock Co.)*, 198 NLRB 77, 79 (1972).

<sup>7</sup> We also note that Operating Engineers was a charged party in *Donley's II*, where the Board originally imposed the areawide award of the disputed work in favor of employees represented by Laborers. While Operating Engineers contends that it is "merely a party-in-interest" here, it fully participated in this proceeding and vigorously defended its conduct. See, e.g., *Local Union No. 113, Laborers (Miller Brewing Co.)*, 184 NLRB 233, 233 fn. 2 (1970) (noncharged party bound by 10(k) determination due to its full participation in the underlying proceeding).

IT IS ORDERED, therefore, that Operating Engineers' motion is denied.

Dated, Washington, D.C., January 30, 2015

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Mark Gaston Pearce, Chairman

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Kent Y. Hirozawa, Member

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Harry I. Johnson, III, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD